

REMARKS

I. Introduction

Claims 13-24 are pending in the Application. By this Amendment, claim 16 is amended to correct a typographical error. In view of the foregoing amendment and following remarks and arguments, Applicant respectfully submits that the Application is in condition for allowance and respectfully solicits a notice stating the same. Prompt reconsideration is respectfully requested.

II. Status

The Office Action Summary portion of the Office Action dated October 7, 2005, states that the Office Action is “[r]esponsive to communication(s) filed on 29 November 2000.” For purposes of making the record clear, Applicant respectfully notes that a second (or subsequent) preliminary amendment was submitted on February 26, 2003, to which the current Office Action is believed to be responsive.

III. Priority

The Office Action does not acknowledge Applicant’s claim for foreign priority under 35 U.S.C. § 119, nor does it acknowledge receipt of copies of the certified copies of the priority document from the International Bureau (PCT Rule 17.2(a)). Applicant respectfully directs the Examiner’s attention to the documents filed on August 28, 2001, and requests the Examiner acknowledge receipt of the priority claim and corresponding documents in the next Office communication.

IV. Claim Rejections Under 35 U.S.C. § 102

At pages 2-5 of the Office Action dated October 7, 2005, claims 13-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,215,870 to Hirai et al (“Hirai”). The Applicant respectfully traverses the rejection for at least the following three reasons.

First, with regard to the 102(e) distinction made at page 2 of the Office Action, the Applicant respectfully disagrees and notes that the distinction is irrelevant, at least for purposes of applying the Hirai reference. Revised 35 U.S.C. 102(e), as amended by the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106-113, 113 Stat. 1501 (1999)), and as further amended by the Intellectual Property and High Technology Technical Amendments Act of 2002 (Pub. L. 107-273, 116 Stat. 1758 (2002)), applies in the examination of all applications, whenever filed, and the reexamination of, or other proceedings to contest, all patents. M.P.E.P. § 2136 (emphasis added). Thus, the filing date of the application being examined is no longer relevant in determining what version of 35 U.S.C. 102(e) to apply in determining the patentability of that application, or the patent resulting from that application. *Id.* The revised statutory provisions supersede all previous versions of 35 U.S.C. 102(e) and 374, with only one exception, which is when the potential reference is based on an international application filed prior to November 29, 2000. *Id.* This exception is not applicable in the instant application. The provisions amending 35 U.S.C. 102(e) and 374 in Pub. L. 107-273 are completely retroactive to the effective date of the relevant provisions in the AIPA (November 29, 2000) and, in any event, the effective filing date of the instant application is November 29, 2000.

Second, the Applicant respectfully submits that Hirai does not anticipate claims 13-24. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added); *see* M.P.E.P. § 2131. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). In this case, Hirai fails to disclose or suggest each and every element set forth in at least claim 13.

Hirai discloses a phone holder, a first embodiment of the phone holder including an outer box 10, a connector module 20, a phone ejector module 30, an inner bottom frame 40, an adjustment module 70, and a ceiling wall 80 (FIGS. 1-2; column 4, lines 59-62). Connector module 20 includes an outer housing 21 having bolts 18 and 88 projecting therefrom for regulating the vertical and horizontal position of the housing 21 within outer box 10 when inserted therein and adjusted within elongated holes 15a and 85a, respectively (FIGS. 1-2 and 9; column 5, line 18 – column 6, line 44). Connector module 20 has a double layered structure consisting of an outer housing 21 and an inner housing 22 (column 6, lines 10-12), and further includes holder connector C constructed in such a manner as to be connectable with a phone connector TC incorporated in a rear end of a mobile phone T (column 6, lines 6-10). The holder connector C is slidably fitted in the inner housing 22 (FIGS. 9, 11-13; column 6, lines 45-50). The holder connector C is guided in inserting and ejecting directions of the mobile phone T by pins 23 (FIGS. 12-13; column 6, lines 50-60). Coil springs 24 are mounted on the pins 23 for urging the holder connector C forward by bias forces of the coil springs 24. Furthermore, the phone ejector module 30 is adapted to provide an inserted mobile phone T with a bias force to disengage the phone connector TC of the mobile phone T from the holder connector C (FIG. 1; column 7, lines 33-38).

Assembling of the phone holder, adjustment of the respective parts, and operation of the assembled and adjusted phone holder is described at column 10, line 56 – column 13, line 13. In operation, phone T is longitudinally inserted into the phone holder and connects to holder connector C while holder connector C is being retracted (FIGS. 12-13; column 12, line 58 – column 13, line 13; *see also* FIGS. 7, 8; column 2, lines 15-40).

In contrast, claim 13 in the instant application recites, in relevant part, “a mating contact unit for engaging the contact mechanism of the telephone, *said mating contact unit being pivotal through a pivot angle and longitudinally displaceable in the holder*” (emphasis added). Paragraph 5 of the disclosure states that the claimed apparatus allows insertion of telephones of a wide range of different dimensions, does not yield as the telephone is placed in position and removed, and, for the purposes of placing in position and removal, moves the telephone into an ergonomically optimal position for the user. Furthermore, paragraph 0009 provides that the ergonomically optimal attachment/discharge position is achieved by pivoting the mating contact unit 45° to 135° in relation to the main plane of the holder. In view of the foregoing, Applicant respectfully submits that Hirai fails to teach each and every element set forth in claim 13. Claims 14-24 depend from claim 13 and are submitted as being allowable for at least the same reasons.

At page 3 of the Office Action, a second embodiment disclosed in Hirai (FIGS. 20-42) is cited as teaching the recited “pivotal” feature of the claimed invention. Specifically, the Office Action cites column 17, lines 40-48, which refers to a phone guiding unit 140 including a pivotal bottom wall 141, an elevating bottom wall 142, and a pair of moveable side walls 143, the phone guiding unit being adapted to guide an inserted mobile phone T towards connector module 120. Hirai, however, does not show or teach a mating contact unit being pivotal through a pivot angle as recited in claim 13. That is, the connector module 120, 123 is not pivotal, but merely includes portions displaceable in phone ejecting/inserting directions (see FIGS. 20 and 38-42; column 22, line 1 – column 23, line 21). Claims 14-24 depend from claim 13 and are submitted as being allowable for at least the same reasons.

Third, even assuming, *arguendo*, that Hirai teaches each and every feature recited in claim 13 as pointed out by the Office Action, the Applicant respectfully submits that the Office Action improperly combines features from various embodiments of Hirai to meet the elements of the claim. This “combination” evidences the fact that Hirai fails to disclose the identical invention in as complete detail as is contained in the claim as required in an anticipation rejection. Thus, in the event that the Examiner decides to maintain a rejection of the claims in view of Hirai, Applicant respectfully submits that any rejection under section 102 is improper.

Reconsideration is respectfully requested.

V. Conclusion

For the foregoing reasons, it is submitted that claims 13-24 are allowable and that the application is in condition for allowance. An early notice to that effect is respectfully requested. It is not believed that extensions of time or other fees are required beyond those that may otherwise be provided for in documents accompanying this paper. If, however, additional extensions of time are needed to prevent abandonment of this application, such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims or any other fee deficiency), are hereby authorized to be charged, and any overpayments credited to, our Deposit Account No. 22-0261.

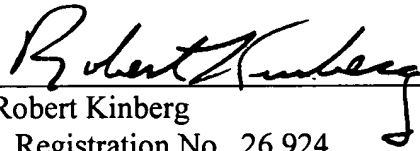
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Appl. No. 09/914,385

The Examiner is respectfully requested to contact Applicant's undersigned Representative if necessary to place the application in condition for allowance. Prompt reconsideration is respectfully requested.

Respectfully submitted,

Date: _____

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